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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/970,390	10/02/2001	Daniel R. Kurz	MICRU : 58614	1995

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EXAMINER

TRINH, HOA B

ART UNIT PAPER NUMBER

2814

DATE MAILED: 07/31/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/970,390

Applicant(s)

KURZ ET AL.

Examiner

Vikki H Trinh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 54-65 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 54-65 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 54-65 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9, 23-25 of U.S. Patent No. 6,136,015.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the phrase "multi-stranded micro-cable" in the patent is inherently the same as "a plurality of strands" in the present application.

3. Claims 54-65 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9, 15-17 of U.S. Patent No. 6,306,153.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the phrase "a micro-cable" in the patent is inherently the same as "a plurality of strands" in the present application.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

2. Claims 54-65 rejected under 35 U.S.C. 102(e) as being anticipated by Ferrera et al. (6,159,165).

Ferrera et al. (6,159,165) discloses an occlusive device 10 having the following:

With respect to claim 54. An occlusive device 10 for use in interventional therapy and vascular surgery adapted to be inserted into a portion of a vasculature for occluding the portion of the vasculature, comprising:

a vasoocclusive coil 16 having a primary coil 56 configuration with a loop at at least one end, said vasoocclusive coil being formed from a plurality of strands 54 including a radiopaque strand 42 to provide a radiopaque marker of the deployed configuration of a device made of the vasoocclusive coil during vascular surgery. See figures 1-13.

As to claim 55. The occlusive device of Claim 54, wherein said vasoocclusive coil has a primary coil configuration with a helical loop at a distal end of the coil. See figures 1-13.

As to claim 56. The occlusive device of Claim 55, wherein said helical loop appears to be in a form of a J-shape configuration. See figures 1-13.

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As to claim 57. The occlusive device of Claim 54, wherein said vasoocclusive coil has a primary coil configuration having two end helical loops, with a helical loop at the proximal and distal ends of the coil. See figures 1-13.

As to claim 58. The occlusive device of Claim 57, wherein said helical loops each have a shape configuration. See figures 1-13.

As to claim 59. The occlusive device of Claim 55, wherein said helical loop has a diameter of about 2 mm. See column 8.

As to claim 60. The occlusive device of Claim 57, wherein said helical loops each have a diameter of about 2 mm. See column 8.

As to claim 61. The occlusive device of Claim 54, wherein said vasoocclusive coil comprises at least one loop intermediate the proximal and distal ends of the coil. See figures 1-13.

As to claim 62. The occlusive device of Claim 57, wherein said vasoocclusive coil comprises two loops intermediate the proximal and distal ends of the coil. See figures 1-13.

As to claim 63. The occlusive device of Claim 54, wherein said radiopaque strand comprises platinum. See column 8.

As to claim 64. The occlusive device of Claim 54, wherein said radiopaque strand comprises tungsten. See column 8.

As to claim 65. The occlusive device of Claim 54, wherein said radiopaque strand comprises gold. See column 8.

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Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Denardo (6,416,541) discloses a vascular device having a wire with a loop and coils. See entire document.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vikki H Trinh whose telephone number is 703-308-8238. The examiner can normally be reached on Mon.-Tues, Thurs.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Olik Chaudhuri can be reached on 703-306-2794. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7722 for regular communications and 703-308-7724 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.



Vikki Trinh
July 25, 2002.